

**FILED** *Scanned in error*

IN THE FIRST CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

2015 JUN 22 AM 10:23 2015 JUN 18 PM 1:17  
RICHARD R. ROCKER, CLERK RICHARD R. ROCKER, CLERK

STATE OF TENNESSEE, *ex rel.*  
HERBERT H. SLATERY III,  
Attorney General and Reporter,

Petitioner,

v.

YAHYA MUSHREH, individually,  
and d/b/a Handy Mart # 27712  
(formerly d/b/a Rakestraw  
Handy Mart #1)  
3909 Elliston Road,  
Memphis, TN 38111,

Respondent.

No. 11C2673  
Judge Gayden

**AGREED FINAL JUDGMENT**

The Plaintiff, State of Tennessee, *ex rel.* Herbert H. Slatery III, Attorney General and Reporter on behalf of the Division of Consumer Affairs (collectively "State"), and the Respondent, Yahya Mushreh, individually, and d/b/a Handy Mart #27712 (hereinafter "Respondent"), have agreed to the terms contained in this Agreed Final Judgment to resolve the State's Petition to Enforce Agreed Order and Incorporated Assurance of Voluntary Compliance, subject to the approval of the Court.

WHEREAS, in July of 2011, the State and Respondent entered into an Agreed Order and Incorporated Assurance of Voluntary Compliance ("AVC") pursuant to Tenn. Code Ann. § 47-18-107 arising from the State's allegations that Respondent sold single cigarettes in violation of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.* by engaging in violations of the Tennessee Minimum Cigarette Pack Size Act of 1999, Tenn. Code Ann. § 47-18-2003, Tenn. Code Ann. § 39-17-1507 and 21 C.F. R. § 1140.14(d).

WHEREAS, the AVC included, among others, the following provisions:

- (A) a permanent injunction prohibiting Respondent from certain acts or practices including directly or indirectly selling or distributing in Tennessee any pack or other container of cigarettes containing fewer than 20 cigarettes which would be in violation of the Tennessee Minimum Cigarette Pack Size Act, Tenn. Code Ann. §§ 47-18-2001, *et seq.*,
- (B) a permanent injunction prohibiting Respondent from certain acts or practices including selling, distributing, or causing to be sold or distributed any cigarettes that are not in the original, sealed package in which they were placed by the manufacturer and which bears the health warning required by federal law which would be in violation of Tenn. Code Ann. § 39-17-1508,
- (C) a permanent injunction prohibiting Respondent from certain acts and practices including breaking or otherwise opening any cigarette or smokeless tobacco packages to sell or distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the minimum cigarette package size defined by 21 C.F.R. § 1140.16(b), or any quantity of cigarette tobacco or smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use,
- (D) a permanent injunction prohibiting Respondent from certain acts and practices including prohibiting Respondent from failing to comply with 21 C.F.R. § 1140.14(d) and 21 C.F.R. § 1140.16(b),

- (E) a requirement that Respondent implement training policies relating to the sale of tobacco products and single cigarettes at all retail outlets he owns or operates, in whole or in part, in the State of Tennessee and to train his employees in such policies regarding the importance of complying with the laws relating to, in part, the prohibition against the sale of single cigarettes, and
- (F) a requirement that Respondent provide the Attorney General's designee with a copy of his youth access tobacco policies and a copy of his single cigarette sales policies adopted pursuant to the AVC within 45 days of the entry of the AVC.

WHEREAS, during the fall of 2013, a test shopper visited Respondent's business located at 3909 Elliston Road in Memphis and the test shopper purchased a single cigarette that was not in the original, sealed package in which the cigarette was placed by the manufacturer.

WHEREAS, Respondent did not provide the Attorney General's designee with copies of his youth access tobacco policies or his single cigarette sales policies adopted pursuant to the AVC before the 45 day deadline set forth in the AVC.

WHEREAS, at the request of the Division of Consumer Affairs to reopen the matter pursuant to Tenn. Code Ann. § 47-18-107(d), the State filed a Petition to Enforce the Agreed Order and Incorporated Assurance of Voluntary Compliance on May 14, 2014.

WHEREAS, the parties have conferred through counsel and have agreed to entry of this Agreed Final Judgment.

NOW THEREFORE, having reached agreement regarding resolution of the State's Petition to Enforce filed on May 14, 2014, and having stipulated to the same and submitted the same for approval and entry by this Court:

**IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED AS  
FOLLOWS:**

1. Pursuant to Tenn. Code Ann. § 47-18-107(d), this Court finds that this matter, previously closed by the filing of an AVC entered on July 8, 2011, shall be reopened for cause, at the request of the Division of Consumer Affairs. The Court finds that the State's Petition asserts that the alleged violations of the prior AVC constitute cause to reopen this matter.

2. Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Agreed Final Judgment is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Agreed Final Judgment, including enforcement of compliance therewith and assessment of penalties, sanctions and remedies for violation(s) thereof. This Agreed Final Judgment and the prior AVC shall be construed consistent with Tennessee law. Respondent agrees to pay all court costs and attorneys' fees associated with any successful petitions to enforce any provision of this Agreed Final Judgment against Respondent.

3. Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Agreed Final Judgment is in Davidson County, Tennessee.

4. The AVC entered on July 8, 2011, shall remain in full force and effect

unless rescinded by agreement of the parties or voided by this Court for good cause.

5. Respondent shall pay the State of Tennessee the sum of \$6,732.50 payable ninety days after entry of this Judgment. All money received shall be paid and used as follows:

- (A) Respondent shall pay the sum of \$3,732.50 to the Tennessee Attorney General for reasonable and appropriate attorneys' fees and costs of investigation, prosecution, monitoring for compliance of this matter, which may be used for consumer protection purposes, and for filing fees or any other lawful purposes at the sole discretion of the Attorney General. The Court finds these are reasonable and appropriate fees.
- (B) Pursuant to Tenn. Code Ann. § 47-18-107(f), Respondent shall pay the sum of \$3,000.00 to the State of Tennessee as a civil penalty for Respondent's acts and/or practices in violation of the Tennessee Consumer Protection Act and the AVC.

6. Payments shall be made within ninety days after entry of this Judgment by electronic funds transfer pursuant to instructions from the Attorney General's office.

7. Respondent shall be required to retain proof of the payment made for two years. Respondent shall provide proof of his payment to the State within 10 days of a request for such information.

8. On the day of entry of this Agreed Final Judgment, Respondent shall provide the State, through counsel, with a current physical address, email address and telephone number where he can be contacted and served with process in the event of default until the monetary portion of this Agreed Final Order is completed. Respondent shall further be required to provide, through counsel, any new physical address, telephone number and e-mail address within two days of relocating to a

new address or of obtaining a new telephone number or e-mail address. Service upon the Respondent for the purposes of enforcing the monetary portion of this Agreed Final Judgment in the event of default shall be effective upon mailing a notice via certified mail return receipt requested. If no response is received, the State, after 30 days, may obtain a default judgment or other adverse ruling sought by the State.

9. In the event of a default in, Respondent agrees that all statements set forth in the State's Petition shall be deemed to be admitted for the limited purpose of establishing non-dischargeability of the sum paid hereunder. Specifically, Respondent agrees and will not contest that this sum is non-dischargeable for individuals under: 11 U.S.C. § 523(a), and for businesses: 11 USC § 1141 (d)(4). Respondent further agrees that in any subsequent proceeding based upon the monetary amount set forth in this Agreed Final Judgment, Respondent shall not contest the State's right to obtain the full amount due and owing, shall reaffirm any such debt if necessary in order to completely fulfill Respondent's monetary obligations to the State, and shall not object in any manner or form that is contradictory to the terms of this Agreed Final Judgment to any proof of claim filed by the State.

10. Respondent has represented and warranted that he has reviewed his financial situation and that:

- (a) he is currently solvent within the meaning of 11 U.S.C. § 547(b)(3), and will not be rendered insolvent by his payments to the State of

Tennessee hereunder. Further, the parties expressly warrant that in evaluating whether to execute this agreement, the Parties have:

(i) intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to the Respondent, within the meaning of 11 U.S.C. § 547(c)(1), and

(ii) concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange; and, .

(b) the following are correct statements:

(i) Respondent was not insolvent within the meaning of 11 U.S.C. § 548(a)(1)(B)(ii) on the date of these promises, covenants and obligations and did not become insolvent within the meaning of that section as a result of these promises, covenants and obligations; and,

(ii) Respondent is receiving reasonably equivalent value, so as to take these promises, covenants and obligations outside the purview of 11 U.S.C. § 548 (a)(1)(B)(i).

(c) Respondent also agrees that this is a payment of debt in the ordinary course of business as set forth in 11 U.S.C. § 547(c)(A) and (B)

(d) Respondent represents and warrants to the State of Tennessee that he has no present intention to file bankruptcy during the course of this

payment plan.

11. Respondent shall give written notice of any bankruptcy filing to:

Deputy Attorney General  
Consumer Advocate & Protection Division  
Tennessee Attorney General's Office  
P.O. Box 20207  
Nashville, TN 37202-0207

and

Tennessee Division of Consumer Affairs  
c/o Tennessee Attorney General's Office  
Bankruptcy Division  
P.O. Box 20207  
Nashville, TN 37202-0207

12. No consent, expressed or implied, by the State to any breach of the payment plan or any of the covenants herein to be performed by Respondent shall be deemed to be a waiver of any succeeding breach of the same.

13. No execution or garnishment on the monetary portion of this Agreed Final Judgment shall issue so long as the payment is made in accordance with this Judgment. In the event Respondent fails to make the required payment within ten days of its due date, the entire monetary balance may be collected by execution, garnishment or other legal process, together with interest pursuant to Tenn. Code Ann. § 47-14-121 from the date of entry of this Agreed Final Judgment. Respondent agrees to pay all attorneys' fees and costs including, but not limited to, court costs associated with any such collection efforts.

14. Respondent agrees that any subsequent failure to comply with the terms hereof shall be considered a violation of the Tennessee Consumer Protection



Act. Further, any knowing violation of the terms of this Agreed Final Judgment shall be punishable by civil penalties of not more than \$1,000.00 for each violation, in addition to any other appropriate penalties, remedies and sanctions available at law, regulation or rule.

15. Respondent has provided the State with certain documents required to comply with the AVC. Respondent acknowledges and agrees that providing these documents to the State in no way constitutes the State's pre-approval, review for compliance with state or federal law, or with the AVC or this Agreed Final Judgment, or a release of any issues relating to such documents.

16. This Agreed Final Judgment shall only be enforceable by the parties to this action and the Court.

17. Respondent waives any and all rights which it may have to be heard in connection with judicial proceedings upon the State's Petition to Enforce and this Agreed Final Judgment.

18. Nothing in the prior AVC or this Agreed Final Judgment shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

19. Respondent agrees that this Agreed Final Judgment and the prior AVC do not entitle Respondent to seek or to obtain attorneys' fees as a prevailing party under any statute, regulation or rule, and Respondent further waives any rights to attorneys' fees that may arise under such statute, regulation or rule.

20. Pursuant to Tenn. Code Ann. § 47-18-116, all costs associated with the

filing and distribution of this Agreed Final Judgment and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Costs shall be taxed to Respondent.

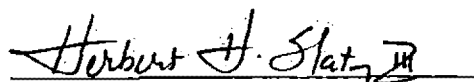
21. This Agreed Final Judgment sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Agreed Final Judgment which are not fully expressed herein or attached hereto.


IT IS SO ORDERED.

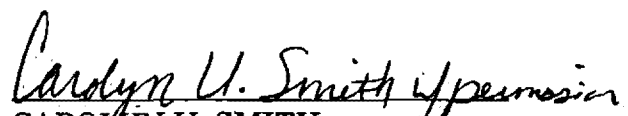
  
JUDGE HAMILTON GAYDEN

JOINTLY APPROVED AND  
SUBMITTED FOR ENTRY:

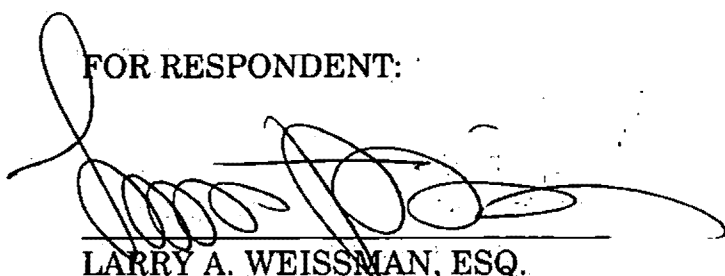
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FOR RESPONDENT:

A handwritten signature in black ink, appearing to read 'Larry A. Weissman', is written over a horizontal line.

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